



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

[Docket No. 130501429-3429-01]

RIN 0648-XC659

Endangered and Threatened Wildlife; Proposed Rule to Revise the Code of Federal Regulations for Species Under the Jurisdiction of the National Marine Fisheries Service

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: We, NMFS, announce proposed revisions to the Code of Federal Regulations (CFR) to clarify and update the descriptions of species under NMFS' jurisdiction that are currently listed as threatened or endangered under the Endangered Species Act of 1973 (ESA). Revisions include format changes to our lists of threatened and endangered species, revisions to regulatory language explaining our lists, updates to the descriptions of certain listed West Coast salmonid species to add or remove hatchery stocks consistent with our recently completed five-year reviews under ESA section 4(c)(2), and corrections to regulatory text to fix inadvertent errors from previous rulemakings and update cross-references. We do not propose to add or remove any species to or from our lists, change the status of any listed species, or add or revise any critical habitat designation.

DATES: Comments and information regarding the proposed revisions must be received (See ADDRESSES) no later than 5 p.m. Pacific Time on [insert date 60 days after publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments, information, or data, identified by the code NOAA-NMFS-2013-0100 by any one of the following methods:

- Electronic Submissions: Submit all electronic comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0100, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice contact Maggie Miller, NMFS, Office of Protected Resources (301) 427-8403; for information on the 5-year status reviews of Pacific salmonids, contact Steve Stone, NMFS, Northwest Region

(503) 231-2317. Copies of the 5-year status reviews can be found on our websites at <http://www.nmfs.noaa.gov/pr/listing/reviews.htm> and <http://www.nwr.noaa.gov>.

SUPPLEMENTARY INFORMATION:

Background

Section 4 of the ESA provides for both NMFS and the U.S. Fish and Wildlife Service (FWS) to make determinations as to the endangered or threatened status of “species” in response to petitions or on their own initiative. In accordance with the ESA, we (NMFS) make determinations as to the threatened or endangered status of species by regulation. These regulations provide the text for each species listing and include the content required by the ESA Section 4(c)(1). We enumerate and maintain a list of species under our jurisdiction which we have determined to be threatened or endangered at 50 CFR 223.102 (threatened species) and 50 CFR 224.101 (endangered species) (hereafter referred to as the “NMFS Lists”). The FWS maintains two master lists of all threatened and endangered species, i.e., both species under NMFS’ jurisdiction and species under FWS’ jurisdiction (the “FWS Lists”) at 50 CFR 17.11 (threatened and endangered animals) and 50 CFR 17.12 (threatened and endangered plants). The term “species” for listing purposes under the ESA includes the following entities: species, subspecies, and, for vertebrates only, “distinct population segments (DPSs).” Pacific salmon are listed as “evolutionarily significant units (ESUs),” which are essentially equivalent to DPSs for the purpose of the ESA. For West Coast salmon and steelhead, many of the ESU and DPS descriptions include fish originating from specific artificial propagation programs (e.g., hatcheries) that, along with their naturally-produced counterparts, are included as part of the listed species.

We recently completed a 5-year review of the status of ESA-listed salmon ESUs and steelhead DPSs in California (76 FR 50447, August 15, 2011; and 76 FR 76386, December 7, 2011) and in Oregon, Idaho, and Washington (76 FR 50448; August 15, 2011). The ESA requires this regular review of listed species to determine whether a species should be delisted, reclassified, or whether the current classification should be retained (16 U.S.C. 1533(c)(2)). As a result of our review, we identified several errors, omissions, and updates that warrant revising the NMFS and FWS Lists for the sake of accuracy and improved readability. We also identified cross-referencing errors in our regulations at 50 CFR 223. In addition, we are taking advantage of this proposed rule to correct or clarify text and update the list formats for all species under NMFS' jurisdiction.

Below we summarize the proposed revisions. In the regulatory text at the end of this Federal Register notice are (1) tables with the revised format depicting the NMFS Lists with the full text of the species' descriptions that we propose to update with this notice, and (2) the full text of proposed corrections and clarifications to our regulations at 50 CFR 223. After considering public comments on these proposed revisions, we will finalize this proposed rule and then coordinate with the FWS to ensure that the changes are reflected in the FWS Lists at 50 CFR 17.11 and 17.12.

Proposed Revisions to the NMFS Lists

General changes for improved consistency and accuracy

Endangered Species Table: For consistency, we propose to combine the separate tables and paragraphs in 50 CFR 224.101 into one table, as we have done for the threatened species table at 50 CFR 223.102.

Introductory Text: We propose adding text to both 50 CFR parts 223 and 224 introducing the table format for the NMFS Lists and explaining the categories of information presented in the tables. This will make the NMFS regulations more consistent with the FWS regulations and will aid the reader in understanding the information presented.

Order of Species' Names: We propose to reorder the species' entries alphabetically in both NMFS Lists based on the species' common name and to remove the numbering system currently used in the NMFS table of threatened species. For example, the current entry in the threatened species list at 50 CFR 223.102, "(a)(23) Puget Sound steelhead DPS," will be identified as "Steelhead (Puget Sound DPS)" and will come after "Salmon" but before "Sturgeon." This will make it easier to search our lists for species of interest and is consistent with the format of the FWS Lists. If the species has no common name, it will be listed alphabetically based on its scientific name. The numbering has not provided a benefit and has made it more complicated to add or delist species.

ESA Rules: In the NMFS Lists, we propose to add a new "ESA rules" column similar to the "Special rules" column used in the FWS Lists. This new column will provide a cross-reference to ESA rules applicable to the species, such as protective regulations for threatened species.

Citations for Listing Determinations: Currently, the column entitled "Citation(s) for listing determination(s)" provides, for some species, a cite to the first page of the Federal Register notice containing the listing determination and, for other species, a cite to the page containing the regulatory text for that species. We are standardizing the information provided in this column so that all citations identify the first page of the relevant Federal Register notice.

Critical Habitat Citations: In both NMFS Lists, we propose to change the entries under the “Citation(s) for critical habitat designation(s)” column to refer to the specific section in 50 CFR 226 (instead of the Federal Register notice) where the critical habitat description is found. Doing so will provide a more direct reference to the applicable regulatory text and maps designating critical habitat and ensure that citations track the most up-to-date descriptions of designated areas. We also propose to shorten the column heading to “Critical habitat.”

Description of Listed Entity: In both NMFS Lists, we propose to change the “Where listed” column to “Description of listed entity.” As currently used, the “Where listed” column contains both substantive information, for example, descriptions of ESUs/DPSs, and non-substantive information, such as the range where the species may normally be found. To avoid confusion, the “Description of listed entity” column will now include only information that is necessary to identify the listed entity that constitutes the “species” for purposes of the ESA. Accordingly, the “Description of listed entity” column will explain whether the listed entity is an entire taxonomic species, a subspecies, or a DPS and will provide a description for DPSs. Information regarding the general geographic range of a listed species may still be found in the Federal Register notice designating that species for listing and referenced in the “Citations for listing determination(s)” column. Additionally, we have standardized the descriptions for each species. For example, current DPS descriptions use varying terminology, such as “spawned in,” “from,” or “hatched in,” to indicate that animals born within a given geographic area comprise the DPS. We propose standardizing our terminology by consistently using the phrase “originating from,” to describe the composition of such DPSs, unless different wording is necessary for accuracy. One specific change for listed steelhead populations is to clarify that

steelhead DPSs include “all naturally spawned anadromous O. mykiss (steelhead) originating below natural and manmade impassable barriers.”

Endangered Species at 50 CFR 224.101

Revisions to endangered species descriptions

Below we summarize the primary proposed revisions to the descriptions of our endangered species listed in 50 CFR 224.101. Based on our recently completed 5-year reviews of the status of ESA-listed salmon ESUs and steelhead DPSs in California, Oregon, Idaho, and Washington (see <http://www.nmfs.noaa.gov/pr/listing/reviews.htm> and <http://www.nwr.noaa.gov> for status review documents), some of the descriptions of our endangered species must be revised to take into account the addition or termination of specific artificial propagation programs which contribute individuals to that ESU or DPS. These are identified as “key changes.” The addition or termination of these artificial propagation programs does not constitute a listing or delisting of an ESU or DPS, but simply a revision to reflect the actual current composition of the listed ESU or DPS. Other changes to the descriptions include standardization of terminology to improve consistency and accuracy in our listings. Where a “key change” is not indicated for a specific revised listing description, then the only change to the description is for standardization of terminology.

Salmon, Chinook (Sacramento River winter-run ESU)

We propose to revise this description to read: “Naturally spawned winter-run Chinook salmon originating from the Sacramento River and its tributaries. Also, winter-run Chinook salmon from one artificial propagation program: the Livingston Stone National Fish Hatchery.” The key change proposed for this ESU is: one artificial propagation program has been terminated (the captive broodstock program maintained at Livingston Stone National Fish Hatchery and the

University of California Bodega Marine Laboratory) and is being removed from the list of artificial propagation programs that are part of this ESU.

Salmon, Chinook (Upper Columbia River spring-run ESU)

We propose to revise this description to read: “Naturally spawned spring-run Chinook salmon originating from Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam (excluding the Okanogan River subbasin). Also, spring-run Chinook salmon from six artificial propagation programs: the Twisp River Program; Chewuch River Program; Methow Program; Winthrop National Fish Hatchery Program; Chiwawa River Program; and the White River Program.”

Salmon, sockeye (Snake River ESU)

We propose to revise this description to read: “Naturally spawned anadromous and residual sockeye salmon originating from the Snake River basin. Also, sockeye salmon from one artificial propagation program: the Redfish Lake Captive Broodstock Program.”

Threatened Species at 50 CFR 223.102

Revisions to threatened species descriptions

Below we summarize the primary proposed revisions to the descriptions of our threatened species listed in 50 CFR 223.102. Based on our recently completed 5-year reviews of the status of ESA-listed salmon ESUs and steelhead DPSs in California, Oregon, Idaho, and Washington (see <http://www.nmfs.noaa.gov/pr/listing/reviews.htm> and <http://www.nwr.noaa.gov> for status review documents), some of the descriptions of our threatened species must be revised to take into account the addition or termination of specific artificial propagation programs which contribute individuals to that ESU or DPS. These are identified as “key changes.” The addition or termination of these artificial propagation programs does not constitute a listing or delisting of

an ESU or DPS, but simply a revision to the composition of the listed ESU or DPS. Other changes to the descriptions include standardization of terminology to improve consistency and accuracy in our listings. Where a "key change" is not indicated for a specific revised listing description, then the only change to the description is for standardization of terminology.

Eulachon (southern DPS)

We propose to revise this description to read: "Eulachon originating from the Skeena River in British Columbia south to and including the Mad River in northern California." This is consistent with the description of this DPS provided in our original listing determination (75 FR 13012), however the description was inadvertently omitted from the current NMFS list in the CFR.

Salmon, Chinook (California Coastal ESU)

We propose to revise this description to read: "Naturally spawned Chinook salmon originating from rivers and streams south of the Klamath River to and including the Russian River." The key changes proposed for this ESU include: seven artificial propagation programs have been terminated (the Humboldt Fish Action Council (Freshwater Creek), Yager Creek, Redwood Creek, Hollow Tree, Van Arsdale Fish Station, Mattole Salmon Group, and Mad River Hatchery fall-run Chinook hatchery programs) and are being removed from the list of artificial propagation programs that are part of this ESU.

Salmon, Chinook (Lower Columbia River ESU)

We propose to revise this description to read: "Naturally spawned Chinook salmon originating from the Columbia River and its tributaries downstream of a transitional point east of the Hood and White Salmon Rivers, and any such fish originating from the Willamette River and its tributaries below Willamette Falls. Not included in this ESU are: (1) spring-run Chinook

salmon originating from the Clackamas River; (2) fall-run Chinook salmon originating from Upper Columbia River Bright hatchery stocks that spawn in the mainstem Columbia River below Bonneville Dam and in other tributaries upstream from the dam to the Hood and White Salmon Rivers; (3) spring-run Chinook salmon originating from the Round Butte Hatchery (Deschutes River, Oregon) and spawning in the Hood River; (4) spring-run Chinook salmon originating from the Carson National Fish Hatchery and spawning in the Wind River; and (5) naturally spawning Chinook salmon originating from the Rogue River Fall Chinook Program. This ESU does include Chinook salmon from 20 artificial propagation programs: the Sea Resources Tule Chinook Program; Big Creek Tule Chinook Program; Astoria High School Salmon-Trout Enhancement Program (STEP) Tule Chinook Program; Warrenton High School STEP Tule Chinook Program; Cowlitz Tule Chinook Program; North Fork Toutle Tule Chinook Program; Kalama Tule Chinook Program; Washougal River Tule Chinook Program; Spring Creek National Fish Hatchery (NFH) Tule Chinook Program; Cowlitz Spring Chinook Programs in the Upper Cowlitz River and the Cispus River; Friends of the Cowlitz Spring Chinook Program; Kalama River Spring Chinook Program; Lewis River Spring Chinook Program; Fish First Spring Chinook Program; Sandy River Hatchery (Oregon Department of Fish and Wildlife Stock #11); Deep River Net Pens Tule Fall Chinook Program; Klaskanine Hatchery Tule Fall Chinook Program; Bonneville Hatchery Tule Fall Chinook Program; and the Little White Salmon NFH Tule Fall Chinook Program.” The key changes proposed for this ESU include: (1) the Elochoman River Tule Chinook Program has been terminated (the last adult returns will be in 2013) and is being removed from the list of artificial propagation programs that are part of this ESU; (2) four new programs (Deep River Net Pens Tule Fall Chinook, Klaskanine Hatchery Tule Fall Chinook, Bonneville Hatchery Tule Fall Chinook, and Little White Salmon National

Fish Hatchery Tule Fall Chinook programs) are now considered part of this ESU; and (3) clarifications – first reported at the time of listing (64 FR 14308; March 24, 1999) – about the status of non-ESU Chinook salmon that are known to spawn within the range of the Lower Columbia River ESU.

Salmon, Chinook (Puget Sound ESU)

We propose to revise this description to read: “Naturally spawned Chinook salmon originating from rivers flowing into Puget Sound from the Elwha River (inclusive) eastward, including rivers in Hood Canal, South Sound, North Sound and the Strait of Georgia. Also, Chinook salmon from 27 artificial propagation programs: the Kendall Creek Hatchery Program; Marblemount Hatchery Program (spring yearlings, spring subyearlings, and summer-run); Harvey Creek Hatchery Program (summer-run and fall-run); Whitehorse Springs Pond Program; Wallace River Hatchery Program (yearlings and subyearlings); Tulalip Bay Program; Issaquah Hatchery Program; Soos Creek Hatchery Program; Icy Creek Hatchery Program; Keta Creek Hatchery Program; White River Hatchery Program; White Acclimation Pond Program; Hupp Springs Hatchery Program; Voights Creek Hatchery Program; Diru Creek Program; Clear Creek Program; Kalama Creek Program; George Adams Hatchery Program; Rick's Pond Hatchery Program; Hamma Hamma Hatchery Program; Dungeness/Hurd Creek Hatchery Program; Elwha Channel Hatchery Program; and the Skookum Creek Hatchery Spring-run Program.” The key changes proposed for this ESU include: (1) the Marblemount Hatchery fall Chinook program has been terminated (the last adult returns will be in 2013) and is being removed from the list of artificial propagation programs that are part of this ESU; and (2) two new programs (Skookum Creek Hatchery spring-run Chinook and Harvey Creek Hatchery fall-run Chinook) are now considered part of this ESU.

Salmon, Chinook (Snake River fall-run ESU)

We propose to revise this description to read: “Naturally spawned fall-run Chinook salmon originating from the mainstem Snake River below Hells Canyon Dam and from the Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River subbasins. Also, fall-run Chinook salmon from four artificial propagation programs: the Lyons Ferry Hatchery Program; Fall Chinook Acclimation Ponds Program; Nez Perce Tribal Hatchery Program; and the Oxbow Hatchery Program.”

Salmon, Chinook (Snake River spring/summer-run ESU)

We propose to revise this description to read: “Naturally spawned spring/summer-run Chinook salmon originating from the mainstem Snake River and the Tucannon River, Grande Ronde River, Imnaha River, and Salmon River subbasins. Also, spring/summer-run Chinook salmon from 11 artificial propagation programs: the Tucannon River Program; Lostine River Program; Catherine Creek Program; Lookingglass Hatchery Program; Upper Grande Ronde Program; Imnaha River Program; Big Sheep Creek Program; McCall Hatchery Program; Johnson Creek Artificial Propagation Enhancement Program; Pahsimeroi Hatchery Program; and the Sawtooth Hatchery Program.” The key changes proposed for this ESU include: (1) three artificial propagation programs (Lemhi River Captive Rearing Experiment Program, East Fork Captive Rearing Experiment Program, and West Fork Yankee Fork Captive Rearing Experiment Program) have been terminated (the last adult returns were in 2009) and are being removed from the list of programs that are part of this ESU; and (2) three captive broodstock programs (Tucannon River, Lostine River, and Catherine Creek) are transitioning to naturally returning fish but will remain as artificial propagation programs that are part of the ESU.

Salmon, Chinook (Upper Willamette River ESU)

We propose to revise this description to read: “Naturally spawned spring-run Chinook salmon originating from the Clackamas River and from the Willamette River and its tributaries above Willamette Falls. Also, spring-run Chinook salmon from six artificial propagation programs: the McKenzie River Hatchery Program (Oregon Department of Fish and Wildlife (ODFW) Stock #23); Marion Forks Hatchery/North Fork Santiam River Program (ODFW Stock #21); South Santiam Hatchery Program (ODFW Stock #24) in the South Fork Santiam River and Mollala River; Willamette Hatchery Program (ODFW Stock #22); and the Clackamas Hatchery Program (ODFW Stock #19).” The key changes proposed for this ESU include: (1) the South Santiam Hatchery Program (ODFW Stock #24) in the Calapooia River has been terminated (the last adult returns were in 2008) and is being removed from the list of artificial propagation programs that are part of this ESU; and (2) two hatchery stock identification numbers (ODFW Stocks #23 and #24) were incorrectly identified in the NMFS regulations and are now correctly assigned to the appropriate artificial propagation programs.

Salmon, chum (Columbia River ESU)

We propose to revise this description to read: “Naturally spawned chum salmon originating from the Columbia River and its tributaries in Washington and Oregon. Also, chum salmon from three artificial propagation programs: the Chinook River Program (Sea Resources Hatchery); Grays River Program; and the Washougal River Hatchery/Duncan Creek Hatchery Program.”

Salmon, chum (Hood Canal summer-run ESU)

We propose to revise this description to read: “Naturally spawned summer-run chum salmon originating from Hood Canal and its tributaries as well as from Olympic Peninsula rivers between Hood Canal and Dungeness Bay (inclusive). Also, summer-run chum salmon from four

artificial propagation programs: the Hamma Hamma Fish Hatchery Program; Lilliwaup Creek Fish Hatchery Program; Tahuya River Program; and the Jimmycomelately Creek Fish Hatchery Program.” The key changes proposed for this ESU include: (1) four artificial propagation programs (Quilcene National Fish Hatchery, Big Beef Creek Fish Hatchery, Salmon Creek Fish Hatchery, and Chimacum Creek Fish Hatchery) have been terminated (the last adult returns were in 2008) and are being removed from the list of programs that are part of this ESU; and (2) the Union River program (originally part of a combined Union River/Tahuya River program) has been terminated leaving just the Tahuya River program as part of the ESU.

Salmon, coho (Lower Columbia River ESU)

We propose to revise this description to read: “Naturally spawned coho salmon originating from the Columbia River and its tributaries downstream from the Big White Salmon and Hood Rivers (inclusive) and any such fish originating from the Willamette River and its tributaries below Willamette Falls. Also, coho salmon from 23 artificial propagation programs: the Grays River Program; Sea Resources Hatchery Program; Peterson Coho Project; Big Creek Hatchery Program (Oregon Department of Fish and Wildlife (ODFW) Stock #13); Astoria High School Salmon-Trout Enhancement Program (STEP) Coho Program; Warrenton High School STEP Coho Program; Cathlamet High School Future Farmers of America Type-N Coho Program; Cowlitz Type-N Coho Program in the Upper and Lower Cowlitz Rivers; Cowlitz Game and Anglers Coho Program; Friends of the Cowlitz Coho Program; North Fork Toutle River Hatchery Program; Kalama River Type-N Coho Program; Kalama River Type-S Coho Program; Lewis River Type-N Coho Program; Lewis River Type-S Coho Program; Fish First Wild Coho Program; Fish First Type-N Coho Program; Syverson Project Type-N Coho Program; Washougal River Type-N Coho Program; Eagle Creek National Fish Hatchery Program; Sandy

Hatchery Program (ODFW Stock #11); and the Bonneville/Cascade/Oxbow Complex (ODFW Stock #14) Hatchery Program.” The key changes proposed for this ESU include: (1) the Elochoman Type-S and Type-N Coho programs have been terminated (the last adult returns were in 2010) and are being removed from the list of artificial propagation programs that are part of this ESU; and (2) one program (Washougal River Type-N Coho Program) was inadvertently omitted from the list of artificial propagation programs and is now being identified as part of this ESU.

Salmon, coho (Oregon Coast ESU)

We propose to revise this description to read: “Naturally spawned coho salmon originating from coastal rivers south of the Columbia River and north of Cape Blanco. Also, coho salmon from one artificial propagation program: the Cow Creek Hatchery Program (Oregon Department of Fish and Wildlife Stock #18).” The key change proposed for this ESU is a correction to the stock identification number for the Cow Creek Hatchery Program.

Steelhead (California Central Valley DPS)

We propose to revise this description to read: “Naturally spawned anadromous O. mykiss (steelhead) originating below natural and manmade impassable barriers from the Sacramento and San Joaquin Rivers and their tributaries; excludes such fish originating from San Francisco and San Pablo Bays and their tributaries. This DPS does include steelhead from two artificial propagation programs: the Coleman National Fish Hatchery Program, and the Feather River Fish Hatchery Program.” The key change proposed for this DPS involves identifying two artificial propagation programs that are part of this DPS (the Coleman National Fish Hatchery Program and the Feather River Fish Hatchery Program) that were identified in the Federal Register notice

(71 FR 834; January 5, 2006) but were inadvertently omitted from the current NMFS List in the CFR.

Steelhead (Central California Coast DPS)

We propose to revise this description to read: “Naturally spawned anadromous O. mykiss (steelhead) originating below natural and manmade impassable barriers from the Russian River to and including Aptos Creek, and all drainages of San Francisco and San Pablo Bays eastward to Chips Island at the confluence of the Sacramento and San Joaquin rivers. Also, steelhead from two artificial propagation programs: the Don Clausen Fish Hatchery Program, and the Kingfisher Flat Hatchery Program (Monterey Bay Salmon and Trout Project).” The key change proposed for this DPS involves identifying two artificial propagation programs that are part of this DPS (the Don Clausen Fish Hatchery Program, and the Kingfisher Flat Hatchery Program (Monterey Bay Salmon and Trout Project) that were identified in the Federal Register notice (71 FR 834; January 5, 2006) but were inadvertently omitted from the current NMFS List in the CFR.

Steelhead (Lower Columbia River DPS)

We propose to revise this description to read: “Naturally spawned anadromous O. mykiss (steelhead) originating below natural and manmade impassable barriers from rivers between the Cowlitz and Wind Rivers (inclusive) and the Willamette and Hood Rivers (inclusive); excludes such fish originating from the upper Willamette River basin above Willamette Falls. This DPS does include steelhead from seven artificial propagation programs: the Cowlitz Trout Hatchery Late Winter-run Program (Lower Cowlitz); Kalama River Wild Winter-run and Summer-run Programs; Clackamas Hatchery Late Winter-run Program (Oregon Department of Fish and Wildlife (ODFW) Stock #122); Sandy Hatchery Late Winter-run Program (ODFW Stock #11);

Hood River Winter-run Program (ODFW Stock #50); and the Lewis River Wild Late-run Winter Steelhead Program.” The key changes proposed for this DPS include identifying artificial propagation programs that are part of this DPS that were identified in the Federal Register notice (71 FR 834; January 5, 2006) but were inadvertently omitted from the current NMFS List in the CFR. Also, based on our recent 5-year review of ESA-listed salmonids (76 FR 50448; August 15, 2011), the following programs are now being included as part of this DPS: the Cowlitz Trout Hatchery Late Winter-run Program (Lower Cowlitz); Kalama River Wild Winter-run and Summer-run Programs; Clackamas Hatchery Late Winter-run Program (Oregon Department of Fish and Wildlife (ODFW) Stock #122); Sandy Hatchery Late Winter-run Program (ODFW Stock #11); Hood River Winter-run Program (ODFW Stock #50); and the Lewis River Wild Late-run Winter Steelhead Program.

Steelhead (Middle Columbia River DPS)

We propose to revise this description to read: “Naturally spawned anadromous O. mykiss (steelhead) originating below natural and manmade impassable barriers from the Columbia River and its tributaries upstream of the Wind and Hood Rivers (exclusive) to and including the Yakima River; excludes such fish originating from the Snake River basin. This DPS does include steelhead from seven artificial propagation programs: the Touchet River Endemic Program; Yakima River Kelt Reconditioning Program (in Satus Creek, Toppenish Creek, Naches River, and Upper Yakima River); Umatilla River Program (Oregon Department of Fish and Wildlife (ODFW) Stock #91); and the Deschutes River Program (ODFW Stock #66). This DPS does not include steelhead that are designated as part of an experimental population.” The key changes proposed for this DPS include identifying artificial propagation programs that are part of this DPS that were identified in the Federal Register notice (71 FR 834; January 5, 2006) but

were inadvertently omitted from the current NMFS List in the CFR. Also, based on our recent 5-year review of ESA-listed salmonids (76 FR 50448; August 15, 2011), the following programs are now being included as part of this DPS: the Touchet River Endemic Program; Yakima River Kelt Reconditioning Program (in Satus Creek, Toppenish Creek, Naches River, and Upper Yakima River); Umatilla River Program (Oregon Department of Fish and Wildlife (ODFW) Stock #91); and the Deschutes River Program (ODFW Stock #66).

Steelhead (Middle Columbia River DPS - XN)

We recently designated a nonessential experimental population of Middle Columbia River steelhead (78 FR 2893, Jan. 15, 2013). We propose to add an entry for this experimental population onto the NMFS list to provide the public with a description of this experimental population, a citation to the Federal Register notice, and indicate ESA rules that apply to this population. We propose to add the description: “Middle Columbia River steelhead only when, and at such times as, they are found above Butte Dam.”

Steelhead (Puget Sound DPS)

We propose to revise this description to read: “Naturally spawned anadromous O. mykiss (steelhead) originating below natural and manmade impassable barriers from rivers flowing into Puget Sound from the Elwha River (inclusive) eastward, including rivers in Hood Canal, South Sound, North Sound and the Strait of Georgia. Also, steelhead from six artificial propagation programs: the Green River Natural Program; White River Winter Steelhead Supplementation Program; Hood Canal Steelhead Supplementation Off-station Projects in the Dewatto, Skokomish, and Duckabush Rivers; and the Lower Elwha Fish Hatchery Wild Steelhead Recovery Program.” The key changes proposed for this DPS include: (1) the Hamma Hamma River Hatchery program has been terminated (the last adult returns were in 2010) and is being

removed from the list of artificial propagation programs that are part of this DPS; and (2) five new programs (the White River Winter Steelhead Supplementation Program, three Hood Canal Steelhead Supplementation off-station projects (Dewatto River, Skokomish River, and Duckabush River), and the Lower Elwha Fish Hatchery Wild Steelhead Recovery Program) are now considered part of this DPS.

Steelhead (Snake River Basin DPS)

We propose to revise this description to read: “Naturally spawned anadromous O. mykiss (steelhead) originating below natural and manmade impassable barriers from the Snake River basin. Also, steelhead from six artificial propagation programs: the Tucannon River Program; Dworshak National Fish Hatchery Program; Lolo Creek Program; North Fork Clearwater Program; East Fork Salmon River Program; and the Little Sheep Creek/Imnaha River Hatchery Program (Oregon Department of Fish and Wildlife Stock #29).” The key changes proposed for this DPS include identifying artificial propagation programs that are part of this DPS that were identified in the Federal Register notice (71 FR 834; January 5, 2006) but were inadvertently omitted from the current NMFS List in the CFR. Also, based on our recent 5-year review of ESA-listed salmonids (76 FR 50448; August 15, 2011), the following programs are now being included as part of this DPS: the Tucannon River Program; Dworshak National Fish Hatchery Program; Lolo Creek Program; North Fork Clearwater Program; East Fork Salmon River Program; and the Little Sheep Creek/Imnaha River Hatchery Program (Oregon Department of Fish and Wildlife Stock #29).

Steelhead (Upper Columbia River DPS)

We propose to revise this description to read: “Naturally spawned anadromous O. mykiss (steelhead) originating below natural and manmade impassable barriers from the Columbia River

and its tributaries upstream of the Yakima River to the U.S.-Canada border. Also, steelhead from six artificial propagation programs: the Wenatchee River Program; Wells Hatchery Program (in the Methow and Okanogan Rivers); Winthrop National Fish Hatchery Program; Omak Creek Program; and the Ringold Hatchery Program.”

Steelhead (Upper Willamette River DPS)

We propose to revise this description to read: “Naturally spawned anadromous winter-run O. mykiss (steelhead) originating below natural and manmade impassable barriers from the Willamette River and its tributaries upstream of Willamette Falls to and including the Calapooia River.”

Correcting Amendments to Agency Regulations at 50 CFR Part 223

During our review of the NMFS Lists we discovered minor errors in our regulations at 50 CFR 223, which specify the protections afforded under ESA section 4(d) to various threatened species. We are proposing to make the following revisions to correct these errors:

1) We propose to correct the grammar in our regulations at 50 CFR 223.101(a) and 50 CFR 223.201(b)(1). In 50 CFR 223.101(a) we are replacing the word “governing” with “govern” and in 50 CFR 223.201(b)(1) we are removing the phrase “ in accordance with the”, which was added in error.

2) Due to an oversight that occurred when we revised our NMFS List of threatened species in 2006 (71 FR 38270; July 6, 2006), our regulations at 50 CFR 223.203 incorrectly refer to the “Marine Mammals” portion of our NMFS List at 50 CFR 223.102(a) when, instead, they should have referred to “Fishes” at 50 CFR 223.102(c). However, as we have proposed to discontinue numbering species in the threatened lists and instead sort all threatened species in the table alphabetically, all future references to the numbered salmonid listings at 50 CFR

223.102(c) will be changed to reference the entire NMFS List at “223.102.” Furthermore, we propose to modify the text in 50 CFR 223.203 to clarify that the regulations are specific to threatened West Coast salmon ESUs and steelhead DPSs (of the genus Oncorhynchus), and not applicable to other anadromous fishes (e.g., eulachon). Therefore, we propose to change the current language in the regulations from “threatened species of salmonids listed” to “threatened West Coast salmon ESUs and steelhead DPSs (of the genus Oncorhynchus) listed”;

3) Our regulations at 50 CFR 223.208 currently refer to corals listed as threatened at “223.102(d)”; however, for the reasons previously described in this notice, we propose to discontinue numbering the species in our NMFS Lists, and therefore propose to change these regulations to refer to the entire NMFS List at “223.102.” Similarly, our regulations at 50 CFR 223.210 and 50 CFR 223.211 currently refer to the Southern DPS of North American green sturgeon listed at “223.102(c)(1)” and the Southern DPS of spotted seal listed at “223.102(a)(3),” respectively. We propose to change these regulations to refer to the entire threatened NMFS List at “223.102.”

References

Copies of previous Federal Register notices and related reference materials are available on the Internet at <http://www.nmfs.noaa.gov/pr/listing/reviews.htm>, <http://www.nwr.noaa.gov>, or upon request (see FOR FURTHER INFORMATION CONTACT section above).

Classification

Regulatory Flexibility Act (5 U.S.C. 601 et seq.) and Executive Order 13211

This proposed rule simply updates sections 223 and 224 of the CFR with information that has already been approved or involves format changes, none of which could result in economic

impacts. Therefore, the economic analysis requirements of the Regulatory Flexibility Act and Executive Order 12866 are not applicable.

Federalism

In accordance with Executive Order 13132, we determined that this proposed rule does not have significant Federalism effects and that a Federalism assessment is not required. The proposed revisions may have some benefit to state and local resource agencies in that the ESA-listed species addressed in this rulemaking are more clearly and consistently described.

Civil Justice Reform

The Department of Commerce has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988. In keeping with that Order, we are proposing revisions to our descriptions of ESA-listed species that will improve the clarity and general draftsmanship of our regulations.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain new or revised information collection requirements for which Office of Management and Budget (OMB) approval is required under the Paperwork Reduction Act. This proposed rule will not impose recordkeeping or reporting requirements on state or local governments, individuals, businesses, or organizations. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

National Environmental Policy Act of 1969 (NEPA)

This proposed rule clarifies and updates the descriptions of species under NMFS' jurisdiction that are currently listed as threatened or endangered under the ESA and thus

primarily administrative in nature. As such, NMFS has determined this proposed rule is categorically excluded from further NEPA review by NOAA Administrative Order 216-6, paragraph 6.03c.3(i). No extraordinary circumstances concerning this action exist. Therefore, NMFS will not prepare an Environmental Assessment or Environmental Impacts statement for the rule.

Government-to-Government Relationship With Tribes

Executive Order 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This proposed rule does not impose substantial direct compliance costs on Indian tribal governments or communities. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this final rule. Nonetheless, during our 5-year review of salmon and steelhead we solicited information from the tribes, met with several tribal governments and associated tribal fisheries commissions, and provided the opportunity for all interested tribes to comment on the proposed changes to the species' status and descriptions and discuss any concerns they may have. We will continue to inform potentially affected tribal governments, solicit their input, and coordinate on future management actions pertaining to the listed species addressed in this proposed rule.

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports,
Imports, Reporting and recordkeeping requirements, Transportation.

Dated: June 18, 2013.

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531-1543; subpart B, § 223.201-202 also issued under 16 U.S.C.
1361 et seq.; 16 U.S.C. 5503(d) for § 223.206(d)(9).

2. Revise § 223.101 paragraph (a) to read as follows:

§ 223.101 Purpose and scope.

(a) The regulations contained in this part identify the species under the jurisdiction of the Secretary of Commerce that have been determined to be threatened species pursuant to section 4(a) of the Act, and provide for the conservation of such species by establishing rules and procedures to govern activities involving the species.

* * * * *

3. Revise § 223.102 to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

(a) The table below identifies the species under the jurisdiction of the Secretary of Commerce that have been determined to be threatened pursuant to section 4(a) of the Act, as well as species treated as threatened because they are sufficiently similar in appearance to threatened species, and experimental populations of threatened species.

(b) The columns entitled “Common name,” “Scientific name,” and “Description of listed entity” define the species within the meaning of the Act. In the “Common name” column, experimental populations are identified as “XE” for essential populations or “XN” for nonessential populations. Species listed based on similarity of appearance are identified as “S/A.” Although a column for “Common name” is included, common names cannot be relied upon for identification of any specimen, because they may vary greatly in local usage. The “Scientific name” column provides the most recently accepted scientific name, relying to the extent practicable on the International Code of Zoological Nomenclature. In cases in which confusion might arise, a synonym(s) will be provided in parentheses. The “Description of listed entity” column identifies whether the listed entity comprises the entire species, a subspecies, or a distinct population segment (DPS) and provides a description for any DPSs. Unless otherwise indicated in the “Description of listed entity” column, all individual members of the listed entity and their progeny retain their listing status wherever found, including individuals in captivity. Information regarding the general range of the species, subspecies, or DPS may be found in the Federal Register notice cited in the “Citation(s) for listing determination(s)” column.

(c) The “Citation(s) for listing determination(s)” column provides reference to the Federal Register notice(s) determining the species’ status under the Act. The abbreviation

“(SPR)” (significant portion of its range) after a citation indicates that the species was listed based on its status in a significant portion of its range. If a citation does not include the “(SPR)” notation, it means that the species was listed based on its status throughout its entire range. For “(SPR)” listings, a geographical description of the SPR may be found in the referenced Federal Register notice. The “(SPR)” notation serves an informational purpose only and does not imply any limitation on the application of the prohibitions or restrictions of the Act or implementing rules.

(d) The “Critical habitat” and “ESA rules” columns provide cross-references to other sections in this part and part 226. The term “NA” appearing in either of these columns indicates that there are no critical habitat designations or ESA rules for that species. However, all other applicable rules in parts 222 through 226 and part 402 still apply to that species. Also, there may be other rules in this title that relate to such wildlife. The “ESA rules” column is not intended to list all Federal, state, tribal, or local governmental regulations that may apply to the species.

(e) The threatened species under the jurisdiction of the Secretary of Commerce are:

Species ¹			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
<u>Marine Mammals</u>					
Sea lion, Steller (Eastern DPS)	<u>Eumetopias jubatus</u>	Steller sea lions born in the wild east of 144° W. Long. Also, Steller sea lions born in captivity whose mother was born in the wild east of 144° W. Long., and progeny of these captives.	55 FR 13488, Apr 10, 1990; 62 FR 24345, May 5, 1997	226.202	223.202, 226.202
Seal, Arctic ringed	<u>Phoca (=Pusa) hispida hispida</u>	Entire subspecies.	77 FR 76706, Dec 28, 2012	NA	NA
Seal, Baltic ringed	<u>Phoca (=Pusa) hispida botnica</u>	Entire subspecies.	77 FR 76706, Dec 28, 2012	NA	NA
Seal, bearded (Beringia DPS)	<u>Erignathus barbatus nauticus</u>	Bearded seals originating from breeding areas in the Arctic Ocean and adjacent seas in the Pacific Ocean between 145° E. Long. (Novosibirskiye) and 130° W. Long., and east of 157° E. Long or east of the Kamchatka Peninsula.	77 FR 76740, Dec 28, 2012	NA	NA
Seal, bearded (Okhotsk DPS)	<u>Erignathus barbatus nauticus</u>	Bearded seals originating from breeding areas in the Pacific Ocean west of 157° E. Long. or west of the Kamchatka Peninsula.	77 FR 76740, Dec 28, 2012	NA	NA
Seal, Guadalupe fur	<u>Arctocephalus townsendi</u>	Entire species.	50 FR 51252, Dec 16, 1985	NA	223.201
Seal, Okhotsk ringed	<u>Phoca (=Pusa) hispida ochote</u>	Entire subspecies.	77 FR 76706, Dec 28, 2012	NA	NA

	<u>nsis</u>				
Seal, spotted (Southern DPS)	<u>Phoca largha</u>	Spotted seals originating from breeding areas in the Pacific Ocean south of 43° N. Lat.	75 FR 65239, Oct 22, 2010	NA	223.211
<u>Sea Turtles</u> ²					
Sea turtle, green	<u>Chelonia mydas</u>	Entire species, except when listed as endangered under § 224.101.	43 FR 32800, Jul 28, 1978	226.208	223.205, 223.206, 223.207
Sea turtle, loggerhead (Northwest Atlantic Ocean DPS)	<u>Caretta caretta</u>	Loggerhead sea turtles originating from the Northwest Atlantic Ocean west of 40° W. Long.	76 FR 58868, Sep 22, 2011	NA	223.205, 223.206, 223.207
Sea turtle, loggerhead (South Atlantic Ocean DPS)	<u>Caretta caretta</u>	Loggerhead sea turtles originating from the South Atlantic Ocean west of 20° E. Long. and east of 67° W. Long.	76 FR 58868, Sep 22, 2011	NA	223.205, 223.206, 223.207
Sea turtle, loggerhead (Southeast Indo-Pacific Ocean DPS)	<u>Caretta caretta</u>	Loggerhead sea turtles originating from the Southeast Indian Ocean east of 80° E. Long. and from the South Pacific Ocean west of 141° E. Long.	76 FR 58868, Sep 22, 2011	NA	223.205, 223.206, 223.207
Sea turtle, loggerhead (Southwest Indian Ocean DPS)	<u>Caretta caretta</u>	Loggerhead sea turtles originating from the Southwest Indian Ocean west of 80° E. Long., and east of 20° E. Long.	76 FR 58868, Sep 22, 2011	NA	223.205, 223.206, 223.207
Sea turtle, olive ridley	<u>Lepidochelys olivacea</u>	Entire species, except when listed as endangered under § 224.101.	43 FR 32800, Jul 28, 1978	NA	223.205, 223.206, 223.207
<u>Fishes</u>					
Eulachon (Southern DPS)	<u>Thaleichthys pacificus</u>	Eulachon originating from the Skeena River in British Columbia south to and including	75 FR 13012, Mar 18, 2010	226.222	NA

		the Mad River in northern California.			
Rockfish, canary (Puget Sound/Georgia Basin DPS)	<u>Sebastes pinniger</u>	Canary rockfish originating from Puget Sound and the Georgia Basin.	75 FR 22276, Apr 28, 2010	NA	NA
Rockfish, yelloweye (Puget Sound/Georgia Basin DPS)	<u>Sebastes ruberrimus</u>	Yelloweye rockfish originating from Puget Sound and the Georgia Basin.	75 FR 22276, Apr 28, 2010	NA	NA
Salmon, Chinook (California Coastal ESU)	<u>Oncorhynchus tshawytscha</u>	Naturally spawned Chinook salmon originating from rivers and streams south of the Klamath River to and including the Russian River.	70 FR 37160, Jun 28, 2005	226.211	223.203
Salmon, Chinook (Central Valley spring-run ESU)	<u>Oncorhynchus tshawytscha</u>	Naturally spawned spring-run Chinook salmon originating from the Sacramento River and its tributaries. Also, spring-run Chinook salmon from the Feather River Hatchery spring-run Chinook Program.	70 FR 37160, Jun 28, 2005	226.211	223.203
Salmon, Chinook (Lower Columbia River ESU)	<u>Oncorhynchus tshawytscha</u>	Naturally spawned Chinook salmon originating from the Columbia River and its tributaries downstream of a transitional point east of the Hood and White Salmon Rivers, and any such fish originating from the Willamette River and its tributaries below Willamette Falls. Not included in this DPS are: (1) spring-run Chinook salmon originating from the Clackamas River; (2) fall-run Chinook salmon originating from Upper Columbia River Bright hatchery stocks, that spawn in the mainstem Columbia River below Bonneville Dam and in other	70 FR 37160, Jun 28, 2005	226.212	223.203

		<p>tributaries upstream from the dam to the Hood and White Salmon Rivers; (3) spring-run Chinook salmon originating from the Round Butte Hatchery (Deschutes River, Oregon) and spawning in the Hood River; (4) spring-run Chinook salmon originating from the Carson National Fish hatchery and spawning in the Wind River; and (5) naturally spawning Chinook salmon originating from the Rogue River Fall Chinook Program. This DPS does include Chinook salmon from 20 artificial propagation programs: the Sea Resources Tule Chinook Program; Big Creek Tule Chinook Program; Astoria High School Salmon-Trout Enhancement Program (STEP) Tule Chinook Program; Warrenton High School STEP Tule Chinook Program; Cowlitz Tule Chinook Program; North Fork Toutle Tule Chinook Program; Kalama Tule Chinook Program; Washougal River Tule Chinook Program; Spring Creek National Fish Hatchery (NFH) Tule Chinook Program; Cowlitz Spring Chinook Program in the Upper Cowlitz River and the Cispus River; Friends of the Cowlitz Spring Chinook Program; Kalama River Spring Chinook Program; Lewis River Spring Chinook Program; Fish First Spring Chinook Program; Sandy River Hatchery (Oregon Department of Fish and Wildlife Stock #11); Deep River Net Pens Tule Fall Chinook</p>			
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		Program; Klaskanine Hatchery Tule Fall Chinook Program; Bonneville Hatchery Tule Fall Chinook Program; and the Little White Salmon NFH Tule Fall Chinook Program.			
Salmon, Chinook (Puget Sound ESU)	<u>Oncorhynchus tshawytscha</u>	Naturally spawned Chinook salmon originating from rivers flowing into Puget Sound from the Elwha River (inclusive) eastward, including rivers in Hood Canal, South Sound, North Sound and the Strait of Georgia. Also, Chinook salmon from 27 artificial propagation programs: the Kendall Creek Hatchery Program; Marblemount Hatchery Program (spring yearlings, spring subyearlings, and summer-run); Harvey Creek Hatchery Program (summer-run and fall-run); Whitehorse Springs Pond Program; Wallace River Hatchery Program (yearlings and subyearlings); Tulalip Bay Program; Issaquah Hatchery Program; Soos Creek Hatchery Program; Icy Creek Hatchery Program; Keta Creek Hatchery Program; White River Hatchery Program; White Acclimation Pond Program; Hupp Springs Hatchery Program; Voights Creek Hatchery Program; Diru Creek Program; Clear Creek Program; Kalama Creek Program; George Adams Hatchery Program; Rick's Pond Hatchery Program; Hamma Hamma Hatchery Program; Dungeness/Hurd Creek Hatchery Program; Elwha Channel Hatchery Program; and the Skookum Creek Hatchery Spring-run Program.	70 FR 37160, Jun 28, 2005	226.212	223.203

Salmon, Chinook (Snake River fall-run ESU)	<u>Oncorhynchus tshawytscha</u>	Naturally spawned fall-run Chinook salmon originating from the mainstem Snake River below Hells Canyon Dam and from the Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River subbasins. Also, fall-run Chinook salmon from four artificial propagation programs: the Lyons Ferry Hatchery Program; Fall Chinook Acclimation Ponds Program; Nez Perce Tribal Hatchery Program; and the Oxbow Hatchery Program.	70 FR 37160, Jun 28, 2005	226.205	223.203
Salmon, Chinook (Snake River spring/summer-run ESU)	<u>Oncorhynchus tshawytscha</u>	Naturally spawned spring/summer-run Chinook salmon originating from the mainstem Snake River and the Tucannon River, Grande Ronde River, Imnaha River, and Salmon River subbasins. Also, spring/summer-run Chinook salmon from 11 artificial propagation programs: the Tucannon River Program; Lostine River Program; Catherine Creek Program; Lookingglass Hatchery Program; Upper Grande Ronde Program; Imnaha River Program; Big Sheep Creek Program; McCall Hatchery Program; Johnson Creek Artificial Propagation Enhancement Program; Pahsimeroi Hatchery Program; and the Sawtooth Hatchery Program.	70 FR 37160, Jun 28, 2005	226.205	223.203
Salmon, Chinook (Upper Willamette River ESU)	<u>Oncorhynchus tshawytscha</u>	Naturally spawned spring-run Chinook salmon originating from the Clackamas River and from the Willamette River and its tributaries above Willamette Falls. Also, spring-run Chinook salmon from six artificial	70 FR 37160, Jun 28, 2005	226.212	223.203

		propagation programs: the McKenzie River Hatchery Program (Oregon Department of Fish and Wildlife (ODFW) Stock #23); Marion Forks Hatchery/North Fork Santiam River Program (ODFW Stock #21); South Santiam Hatchery Program (ODFW Stock #24) in the South Fork Santiam River and Mollala River; Willamette Hatchery Program (ODFW Stock #22); and the Clackamas Hatchery Program (ODFW Stock #19).			
Salmon, chum (Columbia River ESU)	<u>Oncorhynchus</u> <u>keta</u>	Naturally spawned chum salmon originating from the Columbia River and its tributaries in Washington and Oregon. Also, chum salmon from three artificial propagation programs: the Chinook River Program (Sea Resources Hatchery); Grays River Program; and the Washougal River Hatchery/Duncan Creek Hatchery Program.	70 FR 37160, Jun 28, 2005	226.212	223.203
Salmon, chum (Hood Canal summer-run ESU)	<u>Oncorhynchus</u> <u>keta</u>	Naturally spawned summer-run chum salmon originating from Hood Canal and its tributaries as well as from Olympic Peninsula rivers between Hood Canal and Dungeness Bay (inclusive). Also, summer-run chum salmon from four artificial propagation programs: the Hamma Hamma Fish Hatchery Program; Lilliwaup Creek Fish Hatchery Program; Tahuya River Program; and the Jimmycomelately Creek Fish Hatchery Program.	70 FR 37160, Jun 28, 2005	226.212	223.203
Salmon, coho (Lower Columbia River	<u>Oncorhynchus</u> <u>kisutch</u>	Naturally spawned coho salmon originating from the Columbia River and its tributaries downstream from the Big White Salmon and	70 FR 37160, Jun 28, 2005	NA	223.203

ESU)		Hood Rivers (inclusive) and any such fish originating from the Willamette River and its tributaries below Willamette Falls. Also, coho salmon from 23 artificial propagation programs: the Grays River Program; Sea Resources Hatchery Program; Peterson Coho Project; Big Creek Hatchery Program (Oregon Department of Fish and Wildlife (ODFW) Stock #13); Astoria High School Salmon-Trout Enhancement Program (STEP) Coho Program; Warrenton High School STEP Coho Program; Cathlamet High School Future Farmers of America Type-N Coho Program; Cowlitz Type-N Coho Program in the Upper and Lower Cowlitz Rivers; Cowlitz Game and Anglers Coho Program; Friends of the Cowlitz Coho Program; North Fork Toutle River Hatchery Program; Kalama River Type-N Coho Program; Kalama River Type-S Coho Program; Lewis River Type-N Coho Program; Lewis River Type-S Coho Program; Fish First Wild Coho Program; Fish First Type-N Coho Program; Syverson Project Type-N Coho Program; Washougal River Type-N Coho Program; Eagle Creek National Fish Hatchery Program; Sandy Hatchery Program (ODFW Stock #11); and the Bonneville/Cascade/Oxbow Complex (ODFW Stock #14) Hatchery Program.			
Salmon, coho (Oregon Coast	<u>Oncorhynchus kisutch</u>	Naturally spawned coho salmon originating from coastal rivers south of the Columbia	76 FR 35755, Jun 20, 2011	226.212	223.203

ESU)		River and north of Cape Blanco. Also, coho salmon from one artificial propagation program: the Cow Creek Hatchery Program (Oregon Department of Fish and Wildlife Stock #18).			
Salmon, coho (Southern Oregon/Northern California Coast ESU)	<u>Oncorhynchus kisutch</u>	Naturally spawned coho salmon originating from coastal streams and rivers between Cape Blanco, Oregon and Punta Gorda, California. Also, coho salmon from three artificial propagation programs: the Cole Rivers Hatchery Program (ODFW Stock # 52); Trinity River Hatchery Program; and the Iron Gate Hatchery Program.	70 FR 37160, Jun 28, 2005	226.210	223.203
Salmon, sockeye (Ozette Lake ESU)	<u>Oncorhynchus nerka</u>	Naturally spawned sockeye salmon originating from the Ozette River and Ozette Lake and its tributaries. Also, sockeye salmon from two artificial propagation programs: the Umbrella Creek Hatchery Program; and the Big River Hatchery Program.	70 FR 37160, Jun 28, 2005	226.212	223.203
Steelhead (California Central Valley DPS)	<u>Oncorhynchus mykiss</u>	Naturally spawned anadromous <u>O. mykiss</u> (steelhead) originating below natural and manmade impassable barriers from the Sacramento and San Joaquin Rivers and their tributaries; excludes such fish originating from San Francisco and San Pablo Bays and their tributaries. This DPS does include steelhead from two artificial propagation programs: the Coleman National Fish Hatchery Program, and the Feather River Fish Hatchery Program.	71 FR 834, Jan 5, 2006	226.211	223.203
Steelhead	<u>Oncorhynchus</u>	Naturally spawned anadromous <u>O. mykiss</u>	71 FR 834, Jan 5,	226.211	223.203

(Central California Coast DPS)	<u>mykiss</u>	(steelhead) originating below natural and manmade impassable barriers from the Russian River to and including Aptos Creek, and all drainages of San Francisco and San Pablo Bays eastward to Chipps Island at the confluence of the Sacramento and San Joaquin rivers. Also, steelhead from two artificial propagation programs: the Don Clausen Fish Hatchery Program, and the Kingfisher Flat Hatchery Program (Monterey Bay Salmon and Trout Project).	2006		
Steelhead (Lower Columbia River DPS)	<u>Oncorhynchus mykiss</u>	Naturally spawned anadromous <u>O. mykiss</u> (steelhead) originating below natural and manmade impassable barriers from rivers between the Cowlitz and Wind Rivers (inclusive) and the Willamette and Hood Rivers (inclusive); excludes such fish originating from the upper Willamette River basin above Willamette Falls. This DPS does include steelhead from seven artificial propagation programs: the Cowlitz Trout Hatchery Late Winter-run Program (Lower Cowlitz); Kalama River Wild Winter-run and Summer-run Programs; Clackamas Hatchery Late Winter-run Program (Oregon Department of Fish and Wildlife (ODFW) Stock #122); Sandy Hatchery Late Winter-run Program (ODFW Stock #11); Hood River Winter-run Program (ODFW Stock #50); and the Lewis River Wild Late-run Winter Steelhead Program.	71 FR 834, Jan 5, 2006	226.212	223.203
Steelhead	<u>Oncorhynchus</u>	Naturally spawned anadromous <u>O. mykiss</u>	71 FR 834, Jan 5,	226.212	223.203

(Middle Columbia River DPS)	<u>mykiss</u>	(steelhead) originating below natural and manmade impassable barriers from the Columbia River and its tributaries upstream of the Wind and Hood Rivers (exclusive) to and including the Yakima River; excludes such fish originating from the Snake River basin. This DPS does include steelhead from seven artificial propagation programs: the Touchet River Endemic Program; Yakima River Kelt Reconditioning Program (in Satus Creek, Toppenish Creek, Naches River, and Upper Yakima River); Umatilla River Program (Oregon Department of Fish and Wildlife (ODFW) Stock #91); and the Deschutes River Program (ODFW Stock #66). This DPS does not include steelhead that are designated as part of an experimental population.	2006		
Steelhead (Middle Columbia River DPS-XN)	<u>Oncorhynchus mykiss</u>	Middle Columbia River steelhead only when, and at such times as, they are found above Round Butte Dam.	78 FR 2893, Jan. 15, 2013	N/A	223.301
Steelhead (Northern California DPS)	<u>Oncorhynchus mykiss</u>	Naturally spawned anadromous <u>O. mykiss</u> (steelhead) originating below natural and manmade impassable barriers in California coastal river basins from Redwood Creek to and including the Gualala River.	71 FR 834, Jan 5, 2006	226.211	223.203
Steelhead (Puget Sound DPS)	<u>Oncorhynchus mykiss</u>	Naturally spawned anadromous <u>O. mykiss</u> (steelhead) originating below natural and manmade impassable barriers from rivers flowing into Puget Sound from the Elwha River (inclusive) eastward, including rivers	72 FR 26722, May 11, 2007	NA	223.203

		in Hood Canal, South Sound, North Sound and the Strait of Georgia. Also, steelhead from six artificial propagation programs: the Green River Natural Program; White River Winter Steelhead Supplementation Program; Hood Canal Steelhead Supplementation Off-station Projects in the Dewatto, Skokomish, and Duckabush Rivers; and the Lower Elwha Fish Hatchery Wild Steelhead Recovery Program.			
Steelhead (Snake River Basin DPS)	<u>Oncorhynchus</u> <u>mykiss</u>	Naturally spawned anadromous <u>O. mykiss</u> (steelhead) originating below natural and manmade impassable barriers from the Snake River basin. Also, steelhead from six artificial propagation programs: the Tucannon River Program; Dworshak National Fish Hatchery Program; Lolo Creek Program; North Fork Clearwater Program; East Fork Salmon River Program; and the Little Sheep Creek/Imnaha River Hatchery Program (Oregon Department of Fish and Wildlife Stock #29).	71 FR 834, Jan 5, 2006	226.212	223.203
Steelhead (South-Central California Coast DPS)	<u>Oncorhynchus</u> <u>mykiss</u>	Naturally spawned anadromous <u>O. mykiss</u> (steelhead) originating below natural and manmade impassable barriers from the Pajaro River to (but not including) the Santa Maria River.	71 FR 834, Jan 5, 2006	226.211	223.203
Steelhead (Upper Columbia River DPS)	<u>Oncorhynchus</u> <u>mykiss</u>	Naturally spawned anadromous <u>O. mykiss</u> (steelhead) originating below natural and manmade impassable barriers from the Columbia River and its tributaries upstream of the Yakima River to the U.S.-Canada	71 FR 834, Jan 5, 2006	226.212	223.203

		border. Also, steelhead from six artificial propagation programs: the Wenatchee River Program; Wells Hatchery Program (in the Methow and Okanogan Rivers); Winthrop National Fish Hatchery Program; Omak Creek Program; and the Ringold Hatchery Program.			
Steelhead (Upper Willamette River DPS)	<u>Oncorhynchus mykiss</u>	Naturally spawned anadromous winter-run <u>O. mykiss</u> (steelhead) originating below natural and manmade impassable barriers from the Willamette River and its tributaries upstream of Willamette Falls to and including the Calapooia River.	71 FR 834, Jan 5, 2006	226.212	223.203
Sturgeon, Atlantic (Gulf of Maine DPS)	<u>Acipenser oxyrinchus oxyrinchus</u>	Anadromous Atlantic sturgeon originating from watersheds from the Maine/Canadian border and extending southward to include all associated watersheds draining into the Gulf of Maine as far south as Chatham, MA.	77 FR 5880, Feb 6, 2012	NA	NA
Sturgeon, Gulf	<u>Acipenser oxyrinchus desotoi</u>	Entire subspecies.	56 FR 49653, Sep 30, 1991	226.214	17.44(v)
Sturgeon, North American green (Southern DPS)	<u>Acipenser medirostris</u>	Green sturgeon originating from coastal rivers south of the Eel River (exclusive) and the Sacramento River basin.	71 FR 17757, April 7, 2006; 71 FR 19241, April 13, 2006	226.219	223.210
<u>Marine Invertebrates</u>					
Coral, elkhorn	<u>Acropora palmata</u>	Entire species.	71 FR 26852, May 9, 2006	226.216	223.208
Coral, staghorn	<u>Acropora cervicornis</u>	Entire species.	71 FR 26852, May 9, 2006	226.216	223.208
<u>Marine Plants</u>					

Seagrass, Johnson's	<u>Halophila</u> <u>johnsonii</u>	Entire species.	63 FR 49035, Sep 14, 1998	226.213	NA
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¹Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

²Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

[71 FR 26861, May 9, 2006, as amended at 71 FR 31965, June 2, 2006; 71 FR 38270, July 6, 2006; 72 FR 26734, May 11, 2007; 73 FR 7843, Feb. 11, 2008; 73 FR 72236, Nov. 26, 2008; 74 FR 42606, Aug. 24, 2009; 75 FR 13024, Mar. 18, 2010; 75 FR 22289, Apr. 28, 2010; 75 FR 65248, Oct. 22, 2010; 76 FR 35771, June 20, 2011; 76 FR 58951, Sept. 22, 2011; 77 FR 5911, Feb. 6, 2012]

4. In § 223.201, paragraph (b)(1) is revised to read as follows:

§ 223.201 Guadalupe fur seal.

* * * * *

(b) Exceptions. (1) The Assistant Administrator may issue permits authorizing activities which would otherwise be prohibited under paragraph (a) of this section subject to the provisions of part 222 subpart C—General Permit Procedures.

* * * * *

5. In §223.203,

(a) Revise paragraph (a) and the introductory text of paragraph (b);

(b) Revise paragraph (b)(1) and the introductory text of paragraphs (b)(2), (b)(3), and (b)(4);

(c) Remove and reserve paragraph (b)(4)(v);

(d) Revise the introductory text of paragraphs (b)(5), (b)(6), (b)(7), (b)(8), (b)(9), (b)(10), (b)(11), (b)(12), and (b)(13); and,

(e) Revise the first sentence of paragraph (c) to read as follows:

§ 223.203 Anadromous fish.

(a) Prohibitions. The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to fish with an intact adipose fin that are part of the threatened West Coast salmon ESUs and steelhead DPSs (of the genus Oncorhynchus) listed in §223.102.

(b) Limits on the prohibitions. The limits to the prohibitions of paragraph (a) of this section relating to threatened West Coast salmon ESUs and steelhead DPSs (of the genus Oncorhynchus) listed in §223.102 are described in the following paragraphs (b)(1) through

(b)(13):

(1) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations in part 222 of this chapter implementing such exceptions, also apply to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus Oncorhynchus) listed in §223.102.

(2) The prohibitions of paragraph (a) of this section relating to threatened Puget Sound steelhead listed in §223.102 do not apply to:

* * * * *

(3) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus Oncorhynchus) listed in §223.102 do not apply to any employee or designee of NMFS, the United States Fish and Wildlife Service, any Federal land management agency, the Idaho Department of Fish and Game (IDFG), Washington Department of Fish and Wildlife (WDFW), the Oregon Department of Fish and Wildlife (ODFW), California Department of Fish and Game (CDFG), or of any other governmental entity that has co-management authority for the listed salmonids, when the employee or designee, acting in the course of his or her official duties, takes a threatened salmonid without a permit if such action is necessary to:

* * * * *

(4) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus Oncorhynchus) listed in §223.102 do not apply to fishery harvest activities provided that:

* * * * *

(v) [Reserved]

(5) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus Oncorhynchus) listed in §223.102 do not apply to activity associated with artificial propagation programs provided that:

* * * * *

(6) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus Oncorhynchus) listed in §223.102 do not apply to actions undertaken in compliance with a resource management plan developed jointly by the States of Washington, Oregon and/or Idaho and the Tribes (joint plan) within the continuing jurisdiction of United States v. Washington or United States v. Oregon, the on-going Federal court proceedings to enforce and implement reserved treaty fishing rights, provided that:

* * * * *

(7) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus Oncorhynchus) listed in §223.102 do not apply to scientific research activities provided that:

* * * * *

(8) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus Oncorhynchus) listed in §223.102 do not apply to habitat restoration activities, as defined in paragraph (b)(8)(iv) of this section, provided that the activity is part of a watershed conservation plan, and:

* * * * *

(9) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus Oncorhynchus) listed in §223.102 do not apply to the physical diversion of water from a stream or lake, provided that:

* * * * *

(10) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus Oncorhynchus) listed in §223.102 do not apply to routine road maintenance activities provided that:

* * * * *

(11) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus Oncorhynchus) listed in §223.102 do not apply to activities within the City of Portland, Oregon Parks and Recreation Department's (PP&R) Pest Management Program (March 1997), including its Waterways Pest Management Policy updated December 1, 1999, provided that:

* * * * *

(12) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus Oncorhynchus) listed in §223.102 do not apply to municipal, residential, commercial, and industrial (MRCI) development (including redevelopment) activities provided that:

* * * * *

(13) The prohibitions of paragraph (a) of this section relating to the threatened West Coast salmon ESUs and steelhead DPSs (of the genus Oncorhynchus) listed in §223.102 do not apply to non-Federal forest management activities conducted in the State of Washington provided that:

* * * * *

(c) Affirmative Defense. In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened West Coast salmon

ESUs and steelhead DPSs (of the genus Oncorhynchus) listed in §223.102, any person claiming the benefit of any limit listed in paragraph (b) of this section or §223.204(a) shall have a defense where the person can demonstrate that the limit is applicable and was in force, and that the person fully complied with the limit at the time of the alleged violation. * * *

* * * * *

6. In § 223.208, paragraph (a)(1) is revised to read as follows:

§ 223.208 Corals.

(a) * * *

(1) The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to elkhorn (Acropora palmata) and staghorn (A. cervicornis) corals listed as threatened in § 223.102, except as provided in § 223.208(c).

* * * * *

7. In § 223.210,

(a) Revise paragraphs (a) and (b), (b)(1) introductory text, paragraph (b)(2), (b)(3) introductory text, and (b)(4) introductory text;

(b) Revise paragraph (c), (c)(1) introductory text, and paragraphs (c)(2) and (c)(3); and,

(c) Revise paragraphs (d) and (e) to read as follows:

§ 223.210 North American green sturgeon.

(a) Prohibitions. The prohibitions of section 9(a)(1)(A) through 9(a)(1)(G) of the ESA (16 U.S.C. 1538) relating to endangered species apply to the threatened Southern Distinct Population Segment (DPS) of North American green sturgeon listed in § 223.102.

(b) Exceptions. Exceptions to the take prohibitions described in section 9(a)(1)(B) and (C) of the ESA (16 U.S.C. 1538(a)(1)(B) and (C)) applied in paragraph (a) of this section to the

threatened Southern DPS listed in section 223.102 are described in the following paragraphs (b)(1) through (b)(3).

(1) Scientific Research and Monitoring Exceptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to ongoing or future Federal, state, or private-sponsored scientific research or monitoring activities if:

* * * * *

(2) Enforcement Exception. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to any employee of NMFS, when the employee, acting in the course of his or her official duties, takes the Southern DPS listed in § 223.102 without a permit, if such action is necessary for purposes of enforcing the ESA or its implementing regulations.

* * * * *

(3) Emergency Fish Rescue and Salvage Exceptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to emergency fish rescue and salvage activities that include aiding sick, injured, or stranded fish, disposing of dead fish, or salvaging dead fish for use in scientific studies, if:

* * * * *

(4) Habitat Restoration Exceptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to habitat restoration activities including barrier removal or modification to restore water flows, riverine or estuarine bed restoration, natural bank stabilization, restoration of native vegetation, removal of non-native species, or removal of contaminated sediments, that reestablish self-sustaining habitats for the Southern DPS, if:

* * * * *

(c) Exemptions via ESA 4(d) Program Approval. Exemptions from the take prohibitions described in section 9(a)(1)(B) and (C) of the ESA (16 U.S.C. 1538(a)(1)(B) and (C)) applied in paragraph (a) of this section to the threatened Southern DPS listed in § 223.102 are described in paragraphs (c)(1) through (c)(3) of this section.

(1) Scientific Research and Monitoring Exemptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to ongoing or future state-sponsored scientific research or monitoring activities that are part of a NMFS-approved, ESA-compliant state 4(d) research program conducted by, or in coordination with, state fishery management agencies (California Department of Fish and Game, Oregon Department of Fish and Wildlife, Washington Department of Fish and Wildlife, or Alaska Department of Fish and Game), or as part of a monitoring and research program overseen by, or coordinated by, one of these agencies. State 4(d) research programs must meet the following criteria:

* * * * *

(2) Fisheries Exemptions. The prohibitions of paragraph (a) of this section relating to the threatened Southern DPS listed in § 223.102 do not apply to fisheries activities that are conducted in accordance with a NMFS-approved Fishery Management and Evaluation Plan (FMEP). If NMFS finds that an FMEP meets the criteria listed below, a letter of concurrence which sets forth the terms of the FMEP's implementation and the duties of the parties pursuant to the FMEP, will be issued to the applicant.

* * * * *

(3) Tribal Exemptions. The prohibitions of paragraph (a) of this section relating to the

threatened Southern DPS listed in § 223.102 do not apply to fishery harvest or other activities undertaken by a tribe, tribal member, tribal permittee, tribal employee, or tribal agent in Willapa Bay, WA, Grays Harbor, WA, Coos Bay, OR, Winchester Bay, OR, Humboldt Bay, CA, and any other area where tribal treaty fishing occurs, if those activities are compliant with a tribal resource management plan (Tribal Plan), provided that the Secretary determines that implementation of such Tribal Plan will not appreciably reduce the likelihood of survival and recovery of the Southern DPS. In making that determination the Secretary shall use the best available biological data (including any tribal data and analysis) to determine the Tribal Plan's impact on the biological requirements of the species, and will assess the effect of the Tribal Plan on survival and recovery, consistent with legally enforceable tribal rights and with the Secretary's trust responsibilities to tribes.

* * * * *

(d) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the ESA relating to endangered species, including regulations in part 222 of this chapter II implementing such exceptions, also apply to the threatened Southern DPS of North American green sturgeon listed in § 223.102. Federal, state, and private-sponsored research activities for scientific research or enhancement purposes that are not covered under Scientific Research and Monitoring Exceptions as described in paragraph (b)(1) of this section or Scientific Research and Monitoring Exemptions as described in paragraph (c)(1) of this section, may take Southern DPS fish pursuant to the specifications of an ESA section 10 permit. Section 9(a)(1)(B) and (a)(1)(C) take prohibitions would not apply to ongoing research activities if an application for an ESA section 10(a)(1)(A) permit is received by NMFS, preferably through the NMFS online application Web site <https://apps.nmfs.noaa.gov>, no later than November 29, 2010. The take

prohibitions would take effect if the permit application is rejected as insufficient or a permit is denied. If the permit application is received by November 29, 2010, ongoing research activities may continue without take prohibitions until NMFS issues or denies a permit.

(e) Affirmative Defense. In connection with any action alleging a violation of the prohibitions of paragraph (a) of this section with respect to the threatened Southern DPS of North American green sturgeon listed in § 223.102, any person claiming that his or her take is authorized via methods listed in paragraph (b) of this section shall have a defense where the person can demonstrate that the take authorization is applicable and was in force, and that the person fully complied with the take authorization requirements at the time of the alleged violation. This defense is an affirmative defense that must be raised, pleaded, and proven by the proponent. If proven, this defense will be an absolute defense to liability under section 9(a)(1)(G) of the ESA with respect to the alleged violation.

* * * * *

8. Add § 223.211 to read as follows:

§ 223.211 Southern DPS of spotted seal.

The prohibitions of section 9(a)(1)(A) through 9(a)(1)(G) of the ESA (16 U.S.C. 1538) relating to endangered species shall apply to the Southern Distinct Population Segment of the spotted seal listed in §223.102.

* * * * *

For the reasons set out in the preamble, 50 CFR part 224 is amended as follows:

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

9. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531-1543 and 16 U.S.C. 1361 et seq.

10. Revise § 224.101 to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species

(a) The regulations in this part identify the species under the jurisdiction of the Secretary of Commerce that have been determined to be endangered species pursuant to section 4(a) of the Act, and provide for the conservation of such species by establishing rules and procedures to governing activities involving the species.

(b) The regulations in this part apply only to the endangered species enumerated in this section.

(c) The provisions of this part are in addition to, and not in lieu of, other regulations of parts 222 through 226 of this chapter which prescribe additional restrictions or conditions governing endangered species.

(d) The table below identifies the species under the jurisdiction of the Secretary of Commerce that have been determined to be endangered pursuant to section 4(a) of the Act, as well as species treated as endangered because they are sufficiently similar in appearance to endangered species, and experimental populations of endangered species.

(e) The columns entitled “Common name,” “Scientific name,” and “Description of listed entity” define the species within the meaning of the Act. In the “Common name” column, experimental populations are identified as “XE” for essential populations or “XN” for nonessential populations. Species listed based on similarity of appearance are identified as “S/A.” Although a column for “Common name” is included, common names cannot be relied upon for identification of any specimen, because they may vary greatly in local usage. The “Scientific name” column provides the most recently accepted scientific name, relying to the extent practicable on the International Code of Zoological Nomenclature. In cases in which

confusion might arise, a synonym(s) will be provided in parentheses. The “Description of listed entity” column identifies whether the listed entity comprises the entire species, a subspecies, or a distinct population segment (DPS) and provides a description for any DPSs. Unless otherwise indicated in the “Description of listed entity” column, all individual members of the listed entity and their progeny retain their listing status wherever found, including individuals in captivity. Information regarding the general range of the species, subspecies, or DPS may be found in the Federal Register notice cited in the “Citation(s) for listing determination(s)” column.

(f) The “Citation(s) for listing determination(s)” column provides reference to the Federal Register Notice(s) determining the species’ status under the Act. The abbreviation “(SPR)” (significant portion of its range) after a citation indicates that the species was listed based on its status in a significant portion of its range. If a citation does not include the “(SPR)” notation, it means that the species was listed based on its status throughout its entire range. For “(SPR)” listings, a geographical description of the SPR may be found in the referenced Federal Register Notice. The “(SPR)” notation serves an informational purpose only and does not imply any limitation on the application of the prohibitions or restrictions of the Act or implementing rules.

(g) The “Critical habitat” and “ESA rules” columns provide cross-references to other sections in this part and part 226. The term “NA” appearing in either of these columns indicates that there are no critical habitat designations or ESA rules for that species. However, all other applicable rules in parts 222 through 226 and part 402 still apply to that species. Also, there may be other rules in this title that relate to such wildlife. The “ESA rules” column is not intended to list all Federal, state, tribal, or local governmental regulations that may apply to the species.

(h) The endangered species under the jurisdiction of the Secretary of Commerce are:

Species ¹			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
<u>Marine Mammals</u>					
Dolphin, Chinese River (aka baiji)	<u>Lipotes vexillifer</u>	Entire species.	54 FR 22906, May 30, 1989	NA	NA
Dolphin, Indus River	<u>Platanista gangetica minor</u>	Entire subspecies.	55 FR 50835, Dec 11, 1990	NA	NA
Porpoise, Gulf of California harbor (aka vaquita or cochito)	<u>Phocoena sinus</u>	Entire species.	50 FR 1056, Jan 9, 1985	NA	NA
Sea lion, Steller (Western DPS)	<u>Eumetopias jubatus</u>	Steller sea lions born in the wild, west of 144° W. Long. Also, Steller sea lions born in captivity whose mother was born in the wild, west of 144° W. Long., and progeny of these captives.	62 FR 24345, May 5, 1997	226.202	224.103, 226.202
Seal, Hawaiian monk	<u>Monachus schauinslandi</u>	Entire species.	41 FR 51611, Nov 23, 1976	226.201	NA

Seal, Ladoga ringed	<u>Phoca</u> (=Pusa) <u>hispid</u> <u>a ladogensis</u>	Entire subspecies.	77 FR 76706; Dec 28, 2012	NA	NA
Seal, Mediterranean monk	<u>Monachus</u> <u>monachus</u>	Entire species.	35 FR 8491, Jun 2, 1970	NA	NA
Seal, Saimaa ringed	<u>Phoca</u> (=Pusa) <u>hispid</u> <u>saimensis</u>	Entire subspecies.	58 FR 26920, May 6, 1993	NA	NA
Whale, beluga (Cook Inlet DPS)	<u>Delphinapteru</u> <u>s leucas</u>	Beluga whales originating from Cook Inlet, Alaska.	73 FR 62919, Oct 22, 2008	226.220	NA
Whale, blue	<u>Balaenoptera</u> <u>musculus</u>	Entire species.	35 FR 18319, Dec 2, 1970	NA	NA
Whale, bowhead	<u>Balaena</u> <u>mysticetus</u>	Entire species.	35 FR 18319, Dec 2, 1970	NA	NA
Whale, false killer (Main Hawaiian Islands Insular DPS)	<u>Pseudorca</u> <u>crassidens</u>	False killer whales found from nearshore of the main Hawaiian Islands out to 140 km (approximately 75 nautical miles) and permanently reside within this geographic range.	77 FR 70915, November 28, 2012	NA	NA
Whale, fin or finback	<u>Balaenoptera</u> <u>physalus</u>	Entire species.	35 FR 8491, Jun 2, 1970	NA	NA

Whale, gray (Western North Pacific DPS)	<u>Eschrichtius robustus</u>	Western North Pacific (Korean) gray whales.	35 FR 8491, Jun 2, 1970; 59 FR 31094, Jun 16, 1994	NA	NA
Whale, humpback	<u>Megaptera novaeangliae</u>	Entire species.	35 FR 18319, Dec 2, 1970	NA	224.103
Whale, killer (Southern Resident DPS)	<u>Orcinus orca</u>	Killer whales from the J, K, and L pods, except such whales placed in captivity prior to November 2005 and their captive born progeny.	70 FR 69903, Nov 18, 2005	226.206	224.103
Whale, North Atlantic right	<u>Eubalaena glacialis</u>	Entire species.	73 FR 12024, Mar 6, 2008	226.203	224.103, 224.105
Whale, North Pacific right	<u>Eubalaena japonica</u>	Entire species.	73 FR 12024, Mar 6, 2008	226.215	224.103
Whale, sei	<u>Balaenoptera borealis</u>	Entire species.	35 FR 18319, Dec 2, 1970	NA	NA
Whale, Southern right	<u>Eubalaena australis</u>	Entire species.	35 FR 18319, Dec 2, 1970	NA	NA
Whale, sperm	<u>Physeter macrocephalus</u> (= <u>catodon</u>)	Entire species.	35 FR 18319, Dec 2, 1970	NA	NA
<u>Sea Turtles</u> ²					

Sea turtle, green	<u>Chelonia mydas</u>	Breeding colony populations in Florida and on the Pacific coast of Mexico.	43 FR 32800, Jul 28, 1978	226.208	224.104
Sea turtle, hawksbill	<u>Eretmochelys imbricata</u>	Entire species.	35 FR 8491, Jun 2, 1970	226.209	224.104
Sea turtle, Kemp's ridley	<u>Lepidochelys kempii</u>	Entire species.	35 FR 18319, Dec 2, 1970	NA	224.104
Sea turtle, leatherback	<u>Dermochelys coriacea</u>	Entire species.	35 FR 8491, Jun 2, 1970	226.207	224.104
Sea turtle, loggerhead (Mediterranean Sea DPS)	<u>Caretta caretta</u>	Loggerhead sea turtles originating from the Mediterranean Sea.	76 FR 58868, Sep 22, 2011	NA	224.104
Sea turtle, loggerhead (North Indian Ocean DPS)	<u>Caretta caretta</u>	Loggerhead sea turtles originating from the North Indian Ocean.	76 FR 58868, Sep 22, 2011	NA	224.104
Sea turtle, loggerhead (North Pacific Ocean DPS)	<u>Caretta caretta</u>	Loggerhead sea turtles originating from the North Pacific Ocean.	76 FR 58868, Sep 22, 2011	NA	224.104
Sea turtle, loggerhead (Northeast Atlantic Ocean DPS)	<u>Caretta caretta</u>	Loggerhead sea turtles originating from the Northeast Atlantic Ocean east of 40° W. Long., except in the vicinity of the Strait of Gibraltar where the eastern boundary is 5°36' W. Long.	76 FR 58868, Sep 22, 2011	NA	224.104
Sea turtle, loggerhead (South Pacific Ocean DPS)	<u>Caretta caretta</u>	Loggerhead sea turtles originating from the South Pacific Ocean west of 67° W. Long., and east of 141° E. Long.	76 FR 58868, Sep 22, 2011	NA	224.104
Sea turtle, olive ridley	<u>Lepidochelys olivacea</u>	Breeding colony populations on the Pacific coast of Mexico.	43 FR 32800, Jul 28, 1978	NA	224.104
<u>Fishes</u>					

Bocaccio (Puget Sound/Georgia Basin DPS)	<u>Sebastes paucispinis</u>	Bocaccio originating from Puget Sound and the Georgia Basin.	75 FR 22276, Apr 28, 2010	NA	NA
Salmon, Atlantic (Gulf of Maine DPS)	<u>Salmo salar</u>	Naturally spawned Atlantic salmon originating from the Gulf of Maine, including such Atlantic salmon originating from watersheds from the Androscoggin River northward along the Maine coast to the Dennys River. Also, Atlantic salmon from two artificial propagation programs: Green Lake National Fish Hatchery (GLNFH) and Craig Brook National Fish Hatchery (CBNFH). This DPS does not include landlocked salmon and those salmon raised in commercial hatcheries for aquaculture.	74 FR 29344, Jun 19, 2009	226.217	NA
Salmon, Chinook (Sacramento River winter-run ESU)	<u>Oncorhynchus tshawytscha</u>	Naturally spawned winter-run Chinook salmon originating from the Sacramento River and its tributaries. Also, winter-run Chinook salmon from one artificial propagation program: the Livingston Stone National Fish Hatchery.	70 FR 37160, Jun 28, 2005	226.204	NA
Salmon, Chinook (Upper Columbia River spring-run ESU)	<u>Oncorhynchus tshawytscha</u>	Naturally spawned spring-run Chinook salmon originating from Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam (excluding the Okanogan River subbasin). Also, spring-run Chinook salmon from six artificial propagation programs: the Twisp River Program; Chewuch River Program; Methow Program; Winthrop National Fish Hatchery Program; Chiwawa River Program; and the White River Program.	70 FR 37160, Jun 28, 2005	226.212	NA

Salmon, coho (Central California Coast ESU)	<u>Oncorhynchus kisutch</u>	Naturally spawned coho salmon originating from rivers south of Punta Gorda, California to and including Aptos Creek, as well as such coho salmon originating from tributaries to San Francisco Bay. Also, coho salmon from three artificial propagation programs: the Don Clausen Fish Hatchery Captive Broodstock Program, the Scott Creek/King Fisher Flats Conservation Program, and the Scott Creek Captive Broodstock Program.	70 FR 37160, Jun 28, 2005; 77 FR 19552, Apr 2, 2012	226.210	NA
Salmon, sockeye (Snake River ESU)	<u>Oncorhynchus nerka</u>	Naturally spawned anadromous and residual sockeye salmon originating from the Snake River basin. Also, sockeye salmon from one artificial propagation program: the Redfish Lake Captive Broodstock Program.	70 FR 37160, Jun 28, 2005	226.205	NA
Sawfish, largetooth	<u>Pristis perotteti</u>	Entire species.	76 FR 40835, Jul 12, 2011	NA	NA
Sawfish, smalltooth (United States DPS)	<u>Pristis pectinata</u>	Smalltooth sawfish originating from U.S. waters.	68 FR 15674, Apr 1, 2003	226.218	NA
Steelhead (Southern California DPS)	<u>Oncorhynchus mykiss</u>	Naturally spawned anadromous <u>O. mykiss</u> (steelhead) originating below natural and manmade impassable barriers from the Santa Maria River to the U.S.-Mexico Border.	71 FR 834, Jan 5, 2006	226.211	NA
Sturgeon, Atlantic (Carolina DPS)	<u>Acipenser oxyrinchus oxyrinchus</u>	Atlantic sturgeon originating from watersheds (including all rivers and tributaries) from Albemarle Sound southward along the southern Virginia, North Carolina, and South Carolina coastal areas to Charleston Harbor.	77 FR 5914, Feb 6, 2012	NA	NA
Sturgeon,	<u>Acipenser</u>	Anadromous Atlantic sturgeon originating	77 FR 5880, Feb 6,	NA	NA

Atlantic (Chesapeake Bay DPS)	<u>oxyrinchus oxyrinchus</u>	from watersheds that drain into the Chesapeake Bay and into coastal waters from the Delaware-Maryland border on Fenwick Island to Cape Henry, Virginia.	2012		
Sturgeon, Atlantic (New York Bight DPS)	<u>Acipenser oxyrinchus oxyrinchus</u>	Anadromous Atlantic sturgeon originating from watersheds that drain into coastal waters, including Long Island Sound, the New York Bight, and Delaware Bay, from Chatham, MA to the Delaware-Maryland border on Fenwick Island.	77 FR 5880, Feb 6, 2012	NA	NA
Sturgeon, Atlantic (South Atlantic DPS)	<u>Acipenser oxyrinchus oxyrinchus</u>	Atlantic sturgeon originating from watersheds (including all rivers and tributaries) of the ACE (Ashepoo, Combahee, and Edisto) Basin southward along the South Carolina, Georgia, and Florida coastal areas to the St. Johns River, Florida.	77 FR 5914, Feb 6, 2012	NA	NA
Sturgeon, shortnose	<u>Acipenser brevirostrum</u>	Entire species.	32 FR 4001, Mar 11, 1967	NA	NA
Totoaba	<u>Cynoscion macdonaldi</u>	Entire species.	44 FR 29480, May 21, 1979	NA	NA
<u>Marine Invertebrates</u>					
Abalone, black	<u>Haliotis cracherodii</u>	Entire species.	74 FR 1937, Jan 14, 2009	226.221	NA
Abalone, white	<u>Haliotis sorenseni</u>	Entire species.	66 FR 29054, May, 29, 2001.	NA	NA

¹Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

²Jurisdiction for sea turtles by the Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, is limited to turtles while in the water.

[64 FR 14066, Mar. 23, 1999, as amended 64 FR 14328, Mar. 24, 1999; 65 FR 20918, Apr. 19, 2000; 65 FR 69481, Nov. 17, 2000; 66 FR 29055, May 29, 2001; 67 FR 21598, May 1, 2002; 68 FR 15680, Apr. 1, 2003; 70 FR 37203, June 28, 2005; 70 FR 69912, Nov. 18, 2005; 71 FR 861, Jan. 5, 2006; 73 FR 12030, Mar. 6, 2008; 73 FR 63907, Oct. 28, 2008; 73 FR 62930, Oct. 22, 2008; 74 FR 1946, Jan. 14, 2009; 74 FR 29386, June 19, 2009; 75 FR 22290, Apr. 28, 2010; 76 FR 14300, Mar. 16, 2011; 76 FR 40835, July 12, 2011]

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